

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Squad #6	CCRB Case #: 201403399	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/02/2014 2:20 PM	Location of Incident: East 220th Street and Barnes Avenue	Precinct: 47	18 Mo. SOL 10/2/2015	EO SOL 10/2/2015	
Date/Time CV Reported Wed, 04/02/2014 2:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/09/2014 5:48 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Joseph Marquez	00530	932961	NARCB BX
2. DT2 Gregory Smith	02537	907357	NARCB BX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT2 Jose Peinan	02276	916410	NARCB BX
2. DT3 Abdiel Anderson	01429	932254	NARCB BX
3. LT Brendan Higgins	00000	906459	NARCB BX

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Joseph Marquez	Abuse: Det. Joseph Marquez stopped § 87(2)(b)	
B.DT2 Gregory Smith	Abuse: Det. Gregory Smith stopped § 87(2)(b)	
C.DT3 Joseph Marquez	Force: Det. Joseph Marquez used physical force against § 87(2)(b)	
D.DT2 Gregory Smith	Force: Det. Gregory Smith used physical force against § 87(2)(b)	
E.DT3 Joseph Marquez	Abuse: Det. Joseph Marquez searched § 87(2)(b)	
F.DT2 Gregory Smith	Abuse: Det. Gregory Smith searched § 87(2)(b)	
§ 87(4-b) § 87(2)(g)	§ 87(4-b) § 87(2)(g)	
	§ 87(4-b) § 87(2)(g)	

Case Summary

On April 2, 2014, § 87(2)(b) filed this complaint with IAB by telephone (encl. [4A-E]). On April 2, 2014, at 2:20 p.m., in the vicinity of East 220th Street and Barnes Avenue in the Bronx, Det. Gregory Smith and Det. Joseph Marquez of Narcotics Borough Bronx stopped § 87(2)(b) (**Allegations A and B**), used physical force against him (**Allegations C and D**), and searched him (**Allegations E and F**). § 87(2)(b) was released without a summons or arrest.

Mediation, Civil, and Criminal Histories

This case was not eligible for mediation because § 87(2)(b) indicated to the CCRB that he planned to file a lawsuit. As of January 22, 2015, approximately six months after the deadline, § 87(2)(b) has not filed a Notice of Claim (encl. [8A]). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. [2A]).
- Det. Marquez has been a member of the service for 11 years. None of the 37 allegations made against Det. Marquez across 14 cases have been substantiated (encl. [2B-D]). § 87(2)(b) CCRB case 201311704, it was alleged that Det. Marquez searched an individual, but Det. Marquez acknowledged only frisking him, and the allegation was closed as unsubstantiated.
- Det. Smith, who had been a member of the service for 20 years at the time of his retirement, had eight prior CCRB cases against him, from which two allegations of a stop were substantiated (encl. [2E-F]).

Officer Identification

Det. Marquez acknowledged interacting with § 87(2)(b). Although Det. Marquez was listed on the tactical plan as working in the prisoner van with Det. Abdiel Anderson, and Det. Marquez believed he was working with him at the time of this incident, a preponderance of the evidence, including the testimony of Det. Anderson and Lt. Higgins, and the fact that Det. Smith more closely matches the description § 87(2)(b) provided of a black male officer with dreadlocks, finds that Det. Anderson and Det. Smith switched their positions on the tactical team prior to this incident. § 87(2)(g)

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(g)

Allegation A – Abuse of Authority: Det. Joseph Marquez stopped § 87(2)(b)

It is undisputed that Det. Marquez stopped § 87(2)(b). § 87(2)(b) said that Det. Marquez stopped him as he walking on Barnes Avenue in the Bronx. § 87(2)(b) did not remember in which direction he walked, or where exactly he was, but knew he was walking from the higher street numbers to lower street numbers. § 87(2)(b) a 6'4"-tall, 220 pound black male, who wore his hair in braids at the time of this incident, wore a black du-rag, black pants, a gray hoodie, black work boots, and a small knapsack of an unspecified color. § 87(2)(b) was alone and was walking on the east side of the street. When § 87(2)(b) was about to cross East 220th Street, an unmarked black van pulled in front of him and cut him off.

Det. Marquez asked him if his name was § 87(2)(b) § 87(2)(b) replied, “No, my name is § 87(2)(b) § 87(2)(b) Det. Marquez said, “Hold on. Don’t move.” Det. Marquez and Det. Smith then handcuffed § 87(2)(b) Det. Marquez removed his du-rag and remarked that he had braids. Det. Marquez also requested his identification. § 87(2)(b) told Det. Marquez that he had no identification on him. Det. Marquez and Det. Smith detained § 87(2)(b) for approximately 15 to 20 minutes until a gray Nissan sedan drove past. After Det. Marquez and Det. Smith spoke via radio – though § 87(2)(b) did not remember what they said – they released him. Det. Marquez apologized, saying, “Sorry. It’s not you,” (encl. [4G-K]).

Det. Marquez indicated that after he received a radio transmission of a positive narcotics buy, either in that same transmission or a second one shortly after he was informed that the subject of this positive narcotics buy was lost. A description of the subject was included. Det. Marquez remembered only the following aspects of the subject description at the time of his CCRB interview: a young black male, tall, slimly built, and with braided hair. A clothing description was also included, though Det. Marquez did not remember it at the time of his CCRB interview. A direction and mode of flight was given, though again Det. Marquez did not recall exactly what was specified at the time of his interview. As Det. Marquez drove east on a street – he believed it was East 221st Street, but was unsure – he observed § 87(2)(b) from behind at a distance of about half a block, walking quickly southbound on Barnes Avenue and repeatedly looking back over his shoulder. From behind, and due to § 87(2)(b) repeatedly looking back over his shoulder, Det. Marquez was able to tell that he generally fit the description of the lost subject as a tall, slimly built young black male. Det. Marquez made a right onto Barnes Avenue and came closer to § 87(2)(b) and was able to tell that his hair was braided. Det. Marquez did not remember § 87(2)(b) wearing anything that obscured these braids from view. Det. Marquez did not remember how much time he spent searching for the lost subject before he saw § 87(2)(b) nor did he have this noted in his memo book (encl. [5A-F]).

There is differing evidence from the rest of the police officers on the Narcotics team as to the time at which the positive narcotics buy occurred, and when the subject was lost. Lt. Higgins, the team’s supervisor, noted the positive buy in his memo book at 1:45 p.m. (encl. [5G-I]), while the team’s arresting officer, Det. Jose Peinan (encl. [5R-T]), listed it as having been made at 2:10 p.m. § 87(2)(b)’s estimate that he was stopped at approximately 2:20 p.m. means that he was stopped anywhere from 10 to 35 minutes after the initial transaction occurred. The buy report for this transaction is still pending, and Det. Marquez did not prepare any documentation about the stop (encl. [6A]).

Lt. Higgins said he pursued the subject of the transaction on foot from the southeast corner of East 221st Street and White Plains Road in an easterly direction, towards Barnes Avenue. When he was about mid-block on East 221st Street, the subject turned and began running south into a backyard. Lt. Higgins lost sight of the subject when he jumped over a fence or wall in this backyard. Lt. Higgins immediately transmitted to the field team, including Det. Marquez, what information he had, including the direction in which the subject ran and a physical and full clothing description of him (though he did not remember this description more specifically). Lt. Higgins had no recollection of conducting a show-up, or of any individual matching the description of the lost subject being stopped (encl. [5J-L]).

Reasonable suspicion to stop and detain a suspect for purposes of a show-up identification procedure is based on a combination of the following factors: whether or not the suspect matches a provided description, the suspect’s temporal and spatial proximity to the crime scene, and the suspect’s behavior. People v. Whittle, 102 A.D.3d 710 (2nd Dept.-2013) (encl. [1A-B]).

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: Det. Joseph Marquez used physical force against § 87(2)(b)

§ 87(2)(b) alleged that when Det. Marquez and Det. Smith approached him, they both grabbed him and pushed him face-first against the side of the van, after which they both handcuffed him. § 87(2)(b) resisted being handcuffed by holding his hands up above his head as the officers attempted to put them behind his back. Det. Marquez ordered § 87(2)(b) to spread his legs. When § 87(2)(b) refused, Det. Marquez kicked his right ankle while Det. Smith kicked him on his left ankle. Each kicked him more than twice in order to spread his legs, causing pain to § 87(2)(b)'s ankle. Once § 87(2)(b) felt this pain, he ceased all resistance. His legs were spread and he was placed in handcuffs. § 87(2)(b) walked to his work, where his supervisor called an ambulance for him (encl. [4G-K]).

The Ambulance Call Report notes that there was swelling to his right ankle, and that he complained of pain. § 87(2)(b) was brought to § 87(2)(b). X-rays of his ankle revealed no fracture or dislocation. § 87(2)(b) was diagnosed with ankle pain and given Tylenol (see Medical Records folder).

Det. Marquez denied pushing § 87(2)(b) against the side of the van, handcuffing him, kicking his ankles, or otherwise using physical force against him. He denied seeing any officer do so. Det. Marquez characterized § 87(2)(b) as being compliant throughout their encounter (encl. [5D-F]).

Aside from Det. Marquez and Det. Smith, no other officers were present to witness this alleged use of force.

§ 87(2)(g)

Allegation E – Abuse of Authority: Det. Joseph Marquez searched § 87(2)(b)

§ 87(2)(b) alleged that once he was pushed against the side of the van and handcuffed, both Det. Marquez and Det. Smith reached into his front and rear pants pockets and removed items from them, including his cell phone and his wallet. § 87(2)(b) was unsure which officers removed which items from his pockets (encl. [4G-K]).

Det. Marquez acknowledged that he may have frisked § 87(2)(b) for weapons, though he indicated that he did not specifically recall doing so. Det. Marquez said that he did not believe that § 87(2)(b) was armed, but said he likely conducted a frisk out of fear for his safety, as § 87(2)(b) seemed nervous in that he was sweaty and provided responses to Det. Marquez's questions that raised his suspicions as to his involvement in the drug transaction; specifically, when he told the officers that he had just be running down the block. Det. Marquez denied handcuffing § 87(2)(b). He told the CCRB that he did not search § 87(2)(b) nor did he see Det. Smith do so (encl. [5D-F]).

Aside from Det. Marquez and Det. Smith, no other officers were present to witness this allegation.

An officer may frisk a person when he has reasonable suspicion that the person is armed and dangerous. Arizona v. Johnson, 555 U.S. 323 (2009) (encl. [1C-J]). An officer who frisks a suspect and feels a possible weapon on a suspect's person may subsequently search the suspect

for that possible weapon and remove it. People v. Walton, 4 Misc. 3d 1018(A) (Sup. Ct., Bronx Co. 2004). (encl. [1K-N]).

§ 87(2)(g)

Allegation B – Abuse of Authority: Det. Gregory Smith stopped § 87(2)(b)

Allegation D – Force: Det. Gregory Smith used physical force against § 87(2)(b)

Allegation F – Abuse of Authority: Det. Gregory Smith searched § 87(2)(b)

Det. Smith retired from the service on September 1, 2014 (encl. [10G]), and therefore could not be interviewed. § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date